

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CIVIL NO. 1:05CV348

LESLIE A. WHITTINGTON,)	
)	
Plaintiff,)	
)	
Vs.)	<u>O R D E R</u>
)	
NORTH CAROLINA DEPARTMENT)	
OF JUVENILE JUSTICE AND)	
DELINQUENCY PREVENTION,)	
)	
Defendant.)	
)	

THIS MATTER is before the Court on the Defendant's timely filed objections to the Second Memorandum and Recommendation of United States Magistrate Judge Dennis L. Howell. Pursuant to standing orders of designation and 28 U.S.C. § 636, the undersigned referred the Defendant's second motion to dismiss to the Magistrate Judge for a recommendation as to disposition. Having conducted a *de novo* review of those portions of the recommendation to which specific objections were filed, the recommendation is adopted. **28 U.S.C. § 636(b); Fed. R. Civ. P. 72.**

The Defendant moved to dismiss the complaint for failure to state claims upon which relief may be granted. “A complaint should not be dismissed for failure to state a claim upon which relief may be granted unless after accepting all well-pleaded allegations in the plaintiff’s complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff’s favor, it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief.”” ***De’Lonta v. Angelone*, 330 F.3d 630, 633 (4th Cir. 2003) (quoting *Veney v. Wyche*, 293 F.3d 726, 730 (4th Cir. 2002)).**

A detailed recitation of the facts are contained in the Magistrate Judge’s First and Second Memoranda and Recommendations as well as this Court’s previous Order. Even though those facts are not set forth in detail here, they are incorporated by reference herein. **See, Memorandum and Recommendation, filed March 9, 2006; Order, filed April 7, 2006 (adopting in part the March 9 Memorandum and Recommendation).**

After a *de novo* review of the Defendant’s objections and the Plaintiff’s response thereto, the Court finds that the proposed findings of fact are supported by the record and that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby

accepts the Magistrate Judge's Recommendation that the Defendant's motion be denied.

IT IS, THEREFORE, ORDERED that the Defendant's second motion to dismiss is hereby **DENIED**.

IT IS FURTHER ORDERED that the parties comply with the Court's Local Rule 16.1 and file a proposed discovery plan on or before 20 days from entry of this Order. If the parties cannot agree on the terms of such discovery plan, they shall promptly notify the Court and a formal pretrial conference will be scheduled forthwith.

Signed: October 4, 2006



Lacy H. Thornburg
United States District Judge

